

CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795 STAFF REPORT	Hearing Date/Agenda Number PC 07-14-2004 Item: 3.c.
	File Number CP03-049
	Application Type Conditional Use Permit
	Council District 6
	Planning Area Central
	Assessor's Parcel Number(s) 230-42-077, -078
PROJECT DESCRIPTION Completed by: Ed Schreiner	
Location: Southeast side of Vermont Street, approximately 450 feet southwesterly of Myrtle Street	
Gross Acreage: 0.33 Net Acreage: 0.33 Net Density: n/a	
Existing Zoning: R-M Existing Use: Residential Service Facility	
Proposed Zoning: No Change Proposed Use: Residential Service Facility	
GENERAL PLAN Completed by: ES	
Land Use/Transportation Diagram Designation Medium High Density Residential (12-25 DU/AC)	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING Completed by: ES	
North: I-880 Freeway	Freeway
East: Office	A(PD) Planned Development
South: Office	A(PD) Planned Development
West: Office	A(PD) Planned Development
ENVIRONMENTAL STATUS Completed by: ES	
<input type="checkbox"/> Environmental Impact Report found complete	<input type="checkbox"/> Exempt
<input type="checkbox"/> Negative Declaration circulated on	<input type="checkbox"/> Environmental Review Incomplete
<input checked="" type="checkbox"/> Negative Declaration adopted on 2/25/1998	

PUBLIC AGENCY COMMENTS RECEIVED	Completed by: ES
Department of Public Works	
None.	
Other Departments and Agencies	
None.	
GENERAL CORRESPONDENCE	
None.	
ANALYSIS AND RECOMMENDATIONS	

BACKGROUND

Combined Addicts and Professional Services, Inc. (CAPS) is requesting this Conditional Use Permit (CUP) to allow continued operation of a 31-bed residential service facility for which the prior CUP (File No. CP97-033) has expired. The prior Conditional Use Permit, approved on August 4, 1998, allowed a residential service facility providing a sober living environment for 31 residents recovering from drug and/or alcohol abuse and 2 resident managers in the R-M Zoning District. The Permit included a 5-year time condition. The Zoning Code specifies that a timely renewal application (filed no more than 180 days and no less than 90 days prior to expiration of the Permit) extends the life of a time-conditioned CUP until the Planning Commission takes action on the Permit. The applicant filed this application on July 3, 2003, too late for it to be processed as a renewal, and the application expired on August 3, 2003. Residential Service Facilities are a Conditional Use in the subject R-M Zoning District.

The project site consists of a single 0.33-acre parcel developed with two residential structures originally built as single-family residences. Prior to the filing of the original CUP and prior to acquisition of the site by CAPS, one of the two single-family residences (1072 Vermont) was expanded and modified for use as a guest house and the other (1082 Vermont) was converted to a residential service facility, both without benefit of the required permits. These prior illegal activities, which had resulted in impacts on the surrounding neighborhood, provided a very negative starting point for the CAPS proposal to use the structures for a residential service facility. In this context, the permit process was lengthy and acrimonious, eventually resulting in approval of the CUP by the City Council, on appeal. Specific conditions were included to ensure that buildings were brought into conformance with applicable City Codes prior to implementation of the use and to ensure that operation of the residential service facility

ENVIRONMENTAL REVIEW

The environmental impacts of this project were addressed in an Initial Study and Final Negative Declaration prepared at the time of the original Conditional Use Permit (File No. CP97-033). The Negative Declaration concluded that the project would not result in a significant environmental impact. The current application proposes no changes to the project addressed in the Negative Declaration and approved by the City Council.

GENERAL PLAN CONFORMANCE

Residential service facilities are allowed in the Medium High Density (12-25 DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre. The *Population-Dwelling Unit Equivalency* provision of the General Plan provides a density range for non-traditional housing that is based on population rather than the number of dwelling units. The population dwelling unit equivalency is calculated by multiplying the General Plan density range by the acreage and the average household size. Utilizing the 3.2 average persons per household from the 2000 Census, this formula allows a population for the proposed facility of between 12 and 26 persons.

General Plan Policy also specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. This area does not have an over-concentration of residential service facilities.

The existing facility includes 33 beds, which is not in conformance with the General Plan equivalency formula. At the time of the original CUP approval, the population equivalency formula (based on an average persons per household from the 1990 Census of 3.08) indicated an allowed population for the proposed facility of between 12 and 25 persons. The City Council approved the original CUP despite the lack of General Plan conformance and made findings of counterbalancing considerations as required by the Zoning Code (see attached City Council Resolution). In order to approve this Permit, the Planning Commission must also make findings of counterbalancing considerations. The following counterbalancing findings have been included in the draft findings:

1. The project is consistent with the existing pattern and character of the development of the neighborhood.
2. The site has been and will be used in conformance with the zoning designation of the site.

ANALYSIS

The primary issue for this project is conformance with the original Conditional Use Permit approved by the City Council. Prior to operation of the facility, Building and Planning Division staff inspected the site to ensure that the facilities conformed to the Conditional Use Permit and to the requirements of the Building Code. No complaints have been filed with Code Enforcement regarding operation of the facility and staff's review of the existing use in light of the operational requirements of the prior CUP has indicated that the facility is in substantial compliance. Following is brief analysis of conformance with key conditions of the original Permit (see attached City Council Resolution for complete permit conditions).

Condition No. 2. Certification. The applicant/operator shall obtain and maintain certification of the proposed sober living facility from the County of Santa Clara.

CAPS obtained and has continued to maintain certification for the sober living facility by the County of Santa Clara District Attorney's Office.

Condition No 5. Contact Person. On an annual basis, the applicant shall provide the Director of Planning and all residents and businesses within 500 feet, the name and phone number of a designated contact/complaint person, an alternate and the staff manager. Written notice of the initial designated contact/complaint person and phone number shall be provided to the Director of Planning and neighboring properties within 500 feet of the project site prior to recordation of the permit.

The applicant initially met this condition, but did not continue to provide updated information on a yearly basis, although this information is posted in the window of the facility. Staff is recommending that this condition be revised to require that updated information be mailed to surrounding property owners and tenants within 60 days of approval of this permit and that additional mailings be done whenever the contact information changes (see draft condition below).

Condition No. 6. Records Maintenance. Program records of the proposed sober living facility use shall be maintained and made available for review by City Staff as needed.

The applicant has indicated that program records have been maintained and are available for review by City Staff. Staff has received no complaints regarding parking or other issues

Condition No. 20. Management Plan. The residential service facility shall be operated in conformance with the *CAPS Sober Living Program Statement, House Management Plan and Good Neighbor Policy*, dated 5-1-98, regardless of the operator. The Director of Planning retains the right of discretionary review over any changes to this plan and any major changes/revisions are subject to a Conditional Use Permit Amendment.

The applicant has indicated that the facility is continuing to operate in conformance with the management plan approved by the City Council (see attached) and that no changes are proposed to the Plan. Staff has received no complaints regarding conformance with the provisions of the Plan.

Condition No. 27. Community Advisory Council. An Advisory Council shall be established including representatives of the facility operator, the neighborhood and the Department of Planning, Building and Code Enforcement. The exact composition of the Council shall be approved by the Director of Planning to consist of two representatives of the residential neighborhood, two representatives of the business community and one representative of the facility operator. The role of the Advisory Council is to facilitate communication between the operators and the neighborhood to resolve problems that may arise. The Advisory Committee shall meet once prior to occupancy of the facility and once every three months for the first year of operation. A decision shall be made regarding the need to extend the Advisory Council beyond the first year of operation by the Planning Commission at the time of the Compliance Review.

An Advisory Council was established by the Director of Planning and met in conformance with the specifications of this condition. Staff believes that the Advisory Committee served a very useful role in facilitating communication between CAPS and neighborhood and business representatives as the facility was implemented. At the end of the initial year of Advisory Committee meetings, input from the neighborhood indicated that additional meetings were not necessary.

Subsequent Condition No. 5. Compliance Review. A Compliance Review is required in response to written complaints filed with the Director of Planning. A Compliance Review is also scheduled one year from the start of the facility operation and yearly thereafter. Violations of this permit or any nuisance activity shall be subject to an Order to Show Cause why the Permit shall not be revoked or modified.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium High Density Residential (12-25 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-M Residence Zoning District.
3. A Negative Declaration has been granted for this project that indicates there is no substantial evidence that the project will have a significant effect on the environment.
4. Combined Addicts and Professional Services, Inc. (CAPS), is requesting this Conditional Use Permit to allow a residential service facility providing a sober living environment for 31 residents recovering from drug and/or alcohol abuse and 2 resident managers in the R-M Zoning Districts.
5. Residential Service Facilities are a Conditional Use in the R-M District.
6. The 0.33-acre site is developed with two residential structures. Originally built as single-family residences, the larger of the two buildings (1072 Vermont) is proposed to accommodate 20 residents and one resident manager in 9 bedrooms. The smaller building (1082 Vermont) is proposed to house 11 residents and one resident manager in 7 bedrooms.
7. The property owner previously expanded the residence at 1072 Vermont Street to accommodate an unpermitted guesthouse. The smaller residence was operated as a residential service facility without benefit of permits. Interior changes to both structures were made without building permits and the existing garage at 1082 was converted illegally to a residence.
8. The site is surrounded by Interstate to the north, a parking lot for an office facility to the south and east, and offices and an apartment building to the west.
9. A conventional rezoning, File No. C97-068, was approved by City Council on February 1, 2000. This rezoning made put the entire property in the R-3 Residential Zoning District, which is now the

12. Residential service facilities are a land use allowed in the Medium High Density Residential (12-25 DU/AC) land use designation. General Plan policy specifies that uses of this type should be located in residential designations that allow eight or more dwelling units per acre. The *Population-Dwelling Unit Equivalency* provision of the General Plan Discretionary Alternate Use Policies provides a density range for non-traditional housing that is based on population rather than the number of dwelling units. The population dwelling unit equivalency is calculated by multiplying the General Plan density range by the acreage and the average household size. Based on the average persons per household of 3.2 persons from the 2000 Census, this formula allows a population density of between 12 and 26 persons for this 0.33-acre site.
13. The applicant is proposing a 33-bed facility (31 beds and 2 resident managers), which is seven in excess of the maximum population allowed on this site under the General Plan Population Dwelling Unit Equivalency formula.
14. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. This area does not currently have an over-concentration of facilities of residential service facilities.
15. The Zoning Code requires that residential service facilities provide a minimum of one parking space for the first six beds and one space for each additional four beds and one space for each manager. Based on the proposed 31 residents and three managers (one non-resident manager) the project requires 11 parking spaces.
16. The project proposes that nine of the eleven parking spaces to serve the site be provided behind the residence at 1072 Vermont Street. These spaces are accessed from Vermont Street via a 12-foot-wide, two-way driveway that cannot be widened due to the existing building configuration. This access does not meet current standards; however, the narrow driveway is not an unusual situation in this older neighborhood and its worst-case results would be inconvenience to project residents.
17. The remaining two spaces are proposed to be provided in an existing garage behind 1082 Vermont. These spaces are accessed via a 15-foot driveway that also provides access to the adjacent office uses. This driveway is a separate parcel owned jointly by the applicant and the owner of an adjacent property. It will continue to provide access to the two existing garage parking spaces proposed to be occupied by the resident managers.

This Planning Commission concludes and finds, based upon an analysis of the above facts

2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The proposed use is compatible with the surrounding neighborhood.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the City Council finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area: served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region, Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Proposed Residential Service Facility," dated June 6, 1997, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Certification.** The applicant/operator shall obtain and maintain certification of the proposed sober living facility from the County of Santa Clara.
4. **Contact Person.** Within 60 days of approval of this Permit and thereafter each time the information changes, the applicant shall provide the Director of Planning and all residents and businesses within 500 feet, written notification of the name and phone number of a designated contact/complaint person, an alternate and the staff manager.
5. **Records Maintenance.** Program records of the proposed sober living facility use shall be maintained and made available for review by City Staff as needed.
6. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City. Any nuisance activity shall be subject to an Order to Show Cause why the Permit shall not be revoked or modified.
7. **Residents Violations.** Any resident found to violate sobriety from alcohol/controlled substances shall be subject to immediate eviction from the subject facility.
8. **Visiting Requirements.** Visitation hours for residents shall be established and posted on-site and

12. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
13. **Roof Equipment.** All roof equipment shall be screened from view.
14. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
15. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
16. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Permit issued by the Director of Planning.
17. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
18. **Parking.** Parking spaces located at 1082 Vermont Street shall be reserved solely for the use of resident managers. The total number of cars for staff and residents shall not exceed eleven (11), the total number of parking spaces provided on the site.
19. **Management Plan.** The residential service facility shall be operated in conformance with the *CAPS Sober Living Program Statement, House Management Plan and Good Neighbor Policy*, dated 5-1-98, regardless of the operator. The Director of Planning retains the right of discretionary review over any changes to this plan and any major changes/revisions are subject to a Conditional Use Permit Amendment.
20. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
21. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.

25. **Building Code Conformance.** All buildings on the site shall be maintained in conformance with the requirements of the Uniform Building Code.
26. **Limit on Beds/Residents.** The total number of beds/residents in the two residential structures (inclusive of two resident managers) shall be limited to 33, which is a reasonable accommodation for this Permit.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit was approved by the City Council.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on tile notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five years from the date of this Permit.
4. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Director of Planning. In order to be timely, an application for renewal must be filed more than 90 calendar days but less than 180